IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

(1) C.W.P. No.14041 of 2006

Vijaya Bank Staff III Cooperative House Building Society, Panchkula and another.

..... Petitioners.

Versus

Haryana Urban Development Authority, Panchkula and others.

..... Respondents

(2) C.W.P. No.14369 of 2006

Abhinandan Cooperative Group Housing Society, Panchkula.

..... Petitioner.

Versus

Haryana Urban Development Authority, Panchkula and others.

..... Respondents

(3) C.W.P. No.14685 of 2006

M/S Gangotri Cooperative Group Housing Society Ltd., Panchkula.

..... Petitioner.

Versus

Haryana Urban Development Authority, Panchkula and others.

..... Respondents

(4) C.W.P. No.14919 of 2006

The Sapna Co-op. Group Housing Society Ltd.,Panchkula .

..... Petitioner.

Versus

State of Haryana and others.

..... Respondents

(5) C.W.P. No.15097 of 2006

The High Court Advocate Group Housing Society (Registered), Panchkula.

..... Petitioner.

Versus

Haryana Urban Development Authority, Panchkula and others.

..... Respondents

(6) C.W.P. No.15366 of 2006

The Aastha RBI Employees Group Hosing Cooperative Society Ltd., Panchkula.

..... Petitioner.

Versus

Haryana Urban Development Authority, Panchkula and others.

..... Respondents

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(7) C.W.P. No.15695 of 2006

The Narwana Cooperative Group Housing Society Ltd., Panchkula.

..... Petitioner.

Versus

Haryana Urban Development Authority, Panchkula and others.

..... Respondents

Date of Decision: 3.8.2007

CORAM: HON'BLE MR. JUSTICE VIJENDER JAIN,
CHIEF JUSTICE
HON'BLE MR.JUSTICE MAHESH GROVER

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Present: Shri Kamal Sehgal, Advocate for the petitioners in C.W.P.Nos.14041 and 14369 of 2006.

Shri R.S.Mittal, Senior Advocate with Shri Atul Gaur, Advocate for the petitioner in C.W.P.No.14685 of 2006.

Shri R.C.Chaudhary, Advocate for the petitioner in C.W.P.No.14919 of 2006.

Ms.Ranjana Shahi, Advocate for the petitioner in C.W.P.No.15097 of 2006.

Shri Sanjay Vashist, Advocate for Shri Rajinder Nain, Advocate for the petitioner in C.W.P.No.15366 of 2006.

Shri Anurag Jain, Advocate for the petitioner in C.W.P.No.15695 of 2006.

Shri H.S.Hooda, Advocate General, Haryana with Shri Ajay Nara, Advocate for respondent nos. 1 and 2 in C.W.P.Nos. 14041,14369, 15097, 15366 of 2006, for respondent nos. 1 and 3 in C.W.P.No.14685 of 2006 and for respondent nos. 1 to 3 in C.W.P. Nos. 14919 and 15695 of 2006.

Shri Amar Vivek, Advocate with Ms.Deepa Singh and Shri Chanderhans, Advocates for respondent no.3 in

C.W.P. Nos. 14041 14369, 15366 of 2006; for respondent no.4 in C.W.P.No.14919 of 2006; for respondent no.33 in C.W.P.No.15097 of 2006 and for respondent no.34 in C.W.P.No.14685 of 2006.

Shri Rajiv Kataria and Shri Rajnish Jindal, Advocates for respondent no.3 in C.W.P.No.15097 of 2006; for respondent no.4 in C.W.P.No.14685 of 2006; respondent no.6 in C.W.P. Nos.14041, 14369, 15366 of 2006 and for respondent no.7 in C.W.P.No.14919 of 2006.

Shri J.R.Mittal, Senior Advocate with Shri Kashmir Singh, Advocate for respondent no.4 in C.W.P.No.14041,14369, 15366 of 2006; for respondent no.5 in C.W.P.No.14919 of 2006; for respondent no.34 in C.W.P.No.15097 of 2006; for respondent no.35 in C.W.P.No.14685 of 2006.

Shri M.L.Sarin, Senior Advocate with Shri Vaneet Soni and Shri D.B.Singh, Advocates for respondent nos. 5, 7, 10, 11, 14, 15, 18, 20, 23, 26, 27 and 39 in C.W.P.No.14685 of 2006 and for respondent nos.4, 6,9, 10, 13, 14, 17, 19, 22, 25, 26, 38 in C.W.P.No.15097 of 2006.

Shri R.K.Malik, Advocate for respondent no. 5 in C.W.P.Nos. 14041, 14369, 15366 of 2006; for respondent no.6 in C.W.P.No.14919 of 2006; for respondent no.35 in C.W.P.No.15097 of 2006 and for respondent no.36 in C.W.P.No.14685 of 2006.

Shri Sarwan Gupta, Advocate for respondent no.5 in C.W.P.No.15097 of 2006 and for respondent no.6 in C.W.P.No.14685 of 2006.

Shri S.S.Dinarpur, Advocate for respondent no.7 in C.W.P.Nos. 14041, 14369, 15366 of 2006; for respondent no.8 in C.W.P.No.14919 of 2006; for respondent no. 44 in C.W.P.No.15097 of 2006 and for respondent no.45 in C.W.P.No.14685 of 2006.

Shri P.I.P.Singh, Advocate for respondent no.9 in C.W.P.No.14685 of 2006.

Shri Brijender Kaushik, Advocate for respondent no.19 in C.W.P.No.14685 of 2006.

Shri Naveen Batra, Advocate for respondent no.29 in C.W.P.No.14685 of 2006.

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Shri Pankaj Jaina, Advocate for respondent no.37 of 2006 in C.W.P.No.14685 of 2006.

Shri Vinod Gupta, Advocate for respondent no.40 in C.W.P.No.15097 of 2006.

Shri Pardeep Goyal, Advocate for respondent nos. 42 and 43 in C.W.P.No.15097 of 2006 and for respondent nos. 43 and 44 in C.W.P.No.14685 of 2006.

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1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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VIJENDER JAIN, CHIEF JUSTICE

In the aforementioned writ petitions, the petitioners, who are registered Cooperative Group Housing Societies, have challenged the allotment of plots made by the Haryana Urban Development Authority (for short, `the H.U.D.A.') to various Cooperative House Building Societies in Panchkula. Since, the principal challenge is to the procedure adopted by the H.U.D.A. for allotment of plots made pursuant to the Group Housing Scheme -2005 (hereinafter described as `the Scheme') and there is only a slight variation in the facts pleaded therein, we propose to dispose of the writ petitions by this common judgment.

The H.U.D.A. floated a Scheme for allotment of plots to the Cooperative Societies at various places in Haryana. The essential features of the Scheme, which have also become integral part of the challenge in these writ petitions are as follows:-

....

"1.AVAILABILITY OF PLOTS

(a) Only ½ acre, 1acre and 1-1/2 acre plots shall be allotted under this scheme. Two/ three half acres plots shall be joined for allotment of 1 acre and 1-1/2 acres plots. The half acres (2000 sq.mts.) plots available for allotment are as under:-

Sr. No.	Name of U/E	Number of plots	General	EWS	Coop. Socie-ties of Hary-ana and Cen-tral Govt. employ-ees.	Coop. Socie-ties of Defen-ce Pers-onnel and para Mili-tary forces.	Welfare Housing Organi-sation of Hary-ana and Central Govt. employ-ees.	Coop. Soc-ieties of Mps and MLAs
1.	Panchkula	44*	27	4	7	2	2	2
2. to 7	xx	xx	xx	xx	xx	xx	xx	xx
	Total	321	193	31	48	17	16	16

Notes: i) The numbers of plots and area are tentative.
ii) The plots are not necessarily available in one sector/ area.

* This includes three plots of one acre category at Panchkula, one plot of one acre category at Gurgaon, two plots of one acre category at Faridabad and two plots of one category at Panipat."

The rest of the Scheme is not necessary to be extracted here for the simple reason that there is no challenge in the writ petitions with regard to the eligibility, conditions and other aspects contained therein except for the procedure adopted by the H.U.D.A. in view of the availability of the plots.

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It would, however, be necessary to briefly advert to the facts of the writ petitions before proceeding to comment upon the challenge made by the petitioners.

C.W.P.No.14041 of 2006

In this petition, the petitioners were the aspirants for ½ acre plots. They had applied against the plots reserved for the Cooperative Societies of Haryana and Central Government employees, which were seven in number. It is the case of the petitioners that even though they were successful in draw of lots, yet, no plot was allotted to them.

C.W.P.No.14685 of 2006

The petitioner has averred that it had applied for 1-1/2 acre plot and its name was never considered against the category in which it had applied, even though as per the Scheme, there was a stipulation and there was also availability of such plots.

The plea of the petitioner is that it had applied against this category expecting that there would be few applicants and there will be more chances of success for allotment. The requisite amount of Rs.32,40,000/- was deposited by the petitioner and the same was accepted by the authorities of the H.U.D.A., but its name was not considered at the time of draw of lots.

C.W.P.No.14919 of 2006

The petitioner, in this petition, has pleaded that it had applied for ½ acre plot and was declared successful against the category of 1 acre plots, but, was not given any plot even though the plots were available.

C.W.P.Nos.14369 and 15366 of 2006

The case of the petitioners is the similar to the one of the petitioner in C.W.P.No.14919 of 2006.

C.W.P.No.15695 of 2006

The petitioner, in this case, was an aspirant for 1 acre plot, but was declared successful against the category of ½ acre plots and even this plot was not allotted to it.

The challenge made in the writ petitions when encapsulated in brief is that the H.U.D.A. has resorted to arbitrary allotment as ½ acre plots were clubbed to make allotment of 1 acre and 1-1/2 acre plots to benefit some of the Cooperative Group Housing Societies which belong to its employees and the M.Ps./M.L.As.. It has been pointed out that the Societies of the employees of the H.U.D.A. were the major beneficiaries as they had made multiple applications all over the State including Panchkula. Though this has not been specifically pleaded in the writ petitions, yet, at the time of arguments, it was urged before us that H.U.D.A., Urban Estate & Town and Country Planning Employees Welfare Organisation (HEWO) had submitted forty two applications for Panchkula, twenty three for Sonepat, twenty three for Gurgaon and forty three for Faridabad and sixteen plots, in all, were allotted to it. To show that the governing body of HEWO consists of the high ranking officers of the H.U.D.A. and other departments, the petitioners have placed before the Court its Memorandum of Association and Rules & Regulations. The governing body of HEWO, as per this document, is as follows:-

Sr.No.	Designation of the society	Designation of ex-officio	Name of the officer presently holding the charge	Address
1.	Chairman	C.A.,HUDA-cum-D.T.C.P.	Sh.R.K.Singh	SCO-848,HUDA Manimajra.
2.	General Secy. being Managing Director.	Controller of Finance/HUDA	Sh.S.C.Kansal	SCO-841,HUDA Manimajra.
3.	Member	A.D.U.E.	Sh.I.D.Kaushik	SCO-848,HUDA Manimajra.
4.	Member	C.T.P.,Haryana	Sh.J.C.Chopra	Town & Country Plg.Deptt. Haryana,Sec.18, Chd.
5.	Member	C.T.P., HUDA	Sh. B.P.Sinha	SCO 61-68, HUDA Panchkula.
6.	Member	Secretary,HUDA	Sh. V.B.Arora	SCO 841,HUDA Manimajra.
7.	Member	C.E., HUDA	Sh.H.G.Garg	Chief Engineer, HUDA, Sec.8, Panchkula.
8.	Member	S.E.,HUDA	Sh. K.K.Bhugra	S.E.,HUDA, Gurgaon.
9.	Member	Sr.Architect	Sh.M.Bhardwaj	SCO 61-68,HUDA Panchkula.
10.	Member	Chairman Jt. Action Comtt. HUDA Employees Union.	Sh.S.S.Sodhi	Div.No.2,HUDA,
11.	Member	D.T.P. Sonipat	Sh.Rajbir Singh	Town & Country Plg.Deptt. Sonipat
12.	Member(Joint Sec.-cum-Treasurar)	A.O.(HQ.)	Sh.G.I.Sharma	SCO-841,HUDA Manimajra.

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From the above, the petitioners have tried to show that the H.U.D.A. had cornered major plots depriving the real aspirants of their right to get a plot.

That part, it has been submitted that clubbing of ½ acre plots resulted in reverse discrimination to the allottees of this category and once one specific category has been given in the Scheme, the allotment should have been considered separately qua each category and not in the manner which has been adopted by drawing lots from ½ acre plots and clubbing them thereby to make 1 acre and 1-1/2 acre plots.

Upon notice being issued to the respondents, the H.U.D.A. and its functionaries have appeared and denied the charge of arbitrary allotments. It has been stated that in response to the Scheme, 4755 applications were received out of which 360 applications were for 1 acre plots and 4357 applications were for ½ acre plots. Out of 44 plots including 3 plots of 1 acre, which were available, 27 plots were meant for general category and 17 plots were reserved for five categories, which are as follows:-

EWS	4
GSRQ	7
Defence	2
Welfare Organisation	2
MP/MLA	2

Two separate provisions were made to draw the lots. One was to determine the priority from amongst the categories and the other was from the plots. The draw of lots was conducted in the presence of the

general public and M.Ps./ M.L.As. Society was at no.1, Welfare Organisation of Haryana and Central Government employees came second, Co-operative Society of Defence and Para military defence Society came third, General Category GHS came fourth, EWS GHS came 5th and GRSQ of Haryana Central Govt. employees GHS came 6th.

Thereafter, the draw of lots for allotment of plots was conducted. There were three applications under the category of M.Ps. And M.L.As., out of which one society had applied for ½ acre plot, the second for one acre plot and the third for 1-1/2 acre plot. After the draw of lots was conduct, the society which had applied for one acre plot was declared successful and while determining the site numbers by way of draw of lots, slip of ½ acre plot came out and, therefore, two plots of ½ acre each were allotted which satisfied both the criterion, i.e., requirement of one acre plot as well as reservation of two plots also. Similarly, the allotment of other plots was also done in the same manner. The procedure for clubbing of the plots was also explained in para 3 of the written statement as follows:-

> "3. In the case of Societies/ welfare organisations who have applied for one acre or one and half acre plots the following procedure shall be followed:-
>
> a) Half acre plots shall be allotted in ascending order of site nos. to the plot which has come up in the draw of lots.
>
> b) Where the plots are not available in ascending order then same procedure is to be followed in descending order.
>
> c)Where the plots are not available in ascending or in descending order then fresh slip shall be drawn out from the

drum containing the number slips of GHS sites until the matching sites are available.

d) In case no contiguous site is available and all the slips have been drawn out from the drum containing slips of plot nos. then the nearest site available to the last slip of plot drawn shall be allotted."

In so far as one acre plot was concerned, the procedure was explained in paragraph 4 as under:-

a) When the Society/ welfare organization has applied for one acre plot and the slip or the but of the society matches with the slip containing one acre plot/ site nos. then it shall be allotted to the society.

b) When a slip containing one acre site number comes up against society which has applied for a different category of the plot then fresh slip containing the site number shall be drawn up and the original slip put back in the drum after draw of the lots.

c) When only slips of one acre sites are left in the drum and there are no other applicants of one acre sites left, then the applicant of other category shall not be considered for the allotment of one acre site."

The process was also clarified further by explaining in paragraph 4 as under:-

"It is further submitted here that the clarification had also been sought and the same was received vide letter dated

24.8.2006. Detail of the said clarification is given as under:-

a) If a ½ acre plot come sup in the draw of lots, the nearest one acre plot available should also be allotted.

b) If one acre plot comes up in the draw of lots, then the nearest ½ acre plot should also be allotted.

c) However, if an application of ½ acre plot becomes successful in the draw first, only one more plot would remain to be allotted, and therefore, in such a situation the applicants of 1/ ½ acre would not be eligible for the draw. If in the draw for this remaining plot also, applicant of ½ acre is successful, then total 2 plots would get allotted in the category, thus completing the draw for that category. However, if the applicant of 1 acre is successful, then it shall be allotted plot only if 1 acre site comes up to in the draw of lots against such society, since pairing of ½ acre plots in this situation cannot be allowed as the plot nos. shall exceed the numbers advertised in the brochure."

It is also the stand of the H.U.D.A. and its functionaries that the whole process was transparent, the draw of lots was conducted in the presence of the general public which included the applicants and the whole process was videographed so as to eliminate any charge of arbitrariness.

As per the H.U.D.A.and its officers, the procedure to undertake the exercise had been laid down elaborately vide letter dated 3.8.2006 and the same was followed. The relevant extracts of said letter are reproduced below:-

"to determine their priority in the draw of lots, the slips containing the category named will be put in a drum, rotated and the slip taken out one by one which will determine the inter category priority in the draw of lot i.e. the slip coming out first will be considered first in the draw of lots and so on.

2. Number slip of all the GHS sites available in an Urban Estate shall be put in one drum and the buts/ slip of all the eligible applicants in the category under consideration shall be put in another drum. Both the drums shall be rotated and the slip from the drum containing the names of the Societies/ Welfare Organisation shall be drawn out first and thereafter the slip from the drum containing the number of GHS sites shall be taken out and allotted."

It has been pleaded that there was no arbitrariness in the allotments and a rational procedure had been adopted and followed in so far as all the applicants are concerned.

Regarding the charge that HEWO, it has been explained away by saying that each Society had a limitation of 20 members which resulted in a number of societies being floated by the desirous employees resulting in multiple applications. However, the number of plots available against this category were two, regardless of the number of applications and hence, no difference would have been made since the ultimate allotment in this category was restricted to two plots.

The non-allotment of plots to some, who claimed to be successful in the draw of lots was also explained by saying that when their

turn came for drawing of lots from the lots categories, there were no plots left and hence, not given.

Some of the Group Housing Societies, who remained successful in getting the plots and who have been impleaded as respondents, have also filed their written statements and have prayed for dismissal of the writ petitions being without any basis.

We have heard the learned counsel for the parties at great length and have examined the matter in detail.

No doubt, the fact that in the draw of lots for priority of categories, it has been shown that the category of M.Ps. And M.L.As. came first, followed by other societies/ organisations as mentioned hereinabove. The order of priority of the aforesaid categories tends to lead to some scepticism, but this alone cannot be a reason to off-set the allotments if the general principle followed and applied to all the categories is uniform. The Court cannot proceed on mere impressions and assumptions.

Upon analysis, we find that a uniform procedure has been adopted, followed and applied to all the categories similarly. The cart cannot be upset merely because another procedure which, in the opinion of the petitioners or the Court, was more plausible, should have been followed. In an exercise, such as this, the H.U.D.A. had to adopt some methodology and especially in the wake of large number of applicants as against the restricted number of availability of plots and it was also bound to result in a large number of disgruntled applicants, according to whom a better procedure could have been evolved.

The Court has, however, to assess whether the grant was

arbitrary or tainted. If the decision-making process does not suffer from arbitrariness, then merely because another procedure which, to the minds of the petitioners, could have been a better method of dealing with the situation, cannot be a ground for setting aside the allotments.

In Federation of Railway Officers Association and others Versus Union of India, (2003) 4 S.C.C. 289, the Apex Court held as under:-

> "Judicial review of a policy evolved by the Government is limited. When policy according to which or the purpose for which discretion is to be exercised is clearly expressed in the statute, it cannot be said to be an unrestricted discretion. On matters affecting policy and requiring technical expertise the court would leave the matter for decision of those who are qualified to address the issues. Unless the policy or action is inconsistent with the Constitution and the laws or arbitrary or irrational or abuse of power, the court will not interfere in such matters."

In Vijay Lakshmi Versus Punjab University and others, (2003) 8 S.C.C. 40, their Lordships of the Supreme Court observed as under:-

> "In the light of the established propositions of law interpreting Articles 14 to16, it canbe stated that there could be classification between male and female for certain posts. Such classification cannot be said to be arbitrary or unjustified. If separate colleges or schools for girls are justifiable, rules providing appointment of a lady Principal or teacher would also be justified. The object sought to be achieved is a

> precautionary, preventive and protective measure based on public morals and particularly in view of the young age of the girl students to be taught. One may believe in absolute freedom,one may not believe in such freedom but in such case when a policy decision is taken by the State and the rules are framed accordingly, it cannot be termed to be arbitrary or unjustified. Hence, it is not possible to hold that the rules empowering the authority to appoint only a lady Principal or a lady teacher or a lady doctor or a woman Superintendent are violative of Article 14 or 16."

There is always some element of discretion involved in the decision-making process, but the Courts are to see whether such discretionary power has been sullied by the charge of arbitrariness and exercise of uncontrolled discretionary power. If the policy and the subsequent decision taken adhering to such a policy does not establish any hostile discrimination or establish whether equals and unequals are treated differently, then Article 14 of the Constitution has no application. The Court has to examine the question of the charge of arbitrariness from the aforestated principles.

In Air India Versus Nargesh Meerza, (1981) 4 S.C.C. 335, the Supreme Court, while considering the right of equality guaranteed under Article 14 of the Constitution of India, propounded as under:-

> "Thus, from a detailed analysis and close examination of the cases of this Court starting from 1952 till today, the following propositions:-

(1)In considering the fundamental right of equality of opportunity a technical, pedantic or doctrinaire approach should not be made and the doctrine should not be invoked evne if different scales of pay, services terms, leave, etc., are introduced in different or dissimilar posts.

Thus, where the class or categories of service are essentially different in purport and spirit, Article 14 cannot be attracted.

(2) Article 14 forbids hostile discrimination but not reasonable classification. Thus, where persons belonging to a particular class in view of their special attributes, qualities, mode of recruitment and the like, are differently treated in pub lic interest to advance and boost members belonging to backward classes, such a classification would not amount to discrimination having ca close nexus with the objects sought to be achieved so that in such cases Article 14 will be completely out of the way.

(3) Article 14 certainly applies where equals are treated differently without any reasonable basis.

(4) Where equals and unequals are treated differently, Article 14 would have no application.

(5) Even if there be one class of service having several categories with different attributes and incidents, such a category becomes a separate class by itself and no difference or discrimination between such category and the general members of the other class would amount to any

discrimination or to denial of equality of opportunity.

(6) In order to judge whether a separate category has been carved out of a class of service, the following circumstances have generally to be examined:

(a) the nature, the mode and the manner of recruitment of a particular category from the very start,

(b) the classifications of the particular category,

(c) the terms and conditions of service of the members of the category,

(d)the nature and character of the posts and promotional avenues,

(e) the special attributes that the particular category possesses which are not to be found in other classes, and the like."

We are satisfied from the facts of these cases that the H.U.D.A. and its functionaries had formulated a policy which was applied uniformly to all classes of applicants before it and merely because it could have been done in a better way would not be a ground to warrant our interference in exercise of the writ jurisdiction of this Court.

The writ petitions are devoid of any merit and are dismissed as such.

(Vijender Jain)
Chief Justice

August 03,2007
"SCM"

(Mahesh Grover)
Judge